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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,562	04/25/2000	Paul A. Spence	SPEN-15	7770

7590 03/18/2002

Wood Herron & Evans LLP
2700 Carew Tower
Cincinnati, OH 45202

EXAMINER

BOCKELMAN, MARK

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 03/18/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,562

Applicant(s)

SPENCE, PAUL A. *CA*

Examiner

Mark W Bockelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1,3,4,10-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 2,5-9 and 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to whether applicant is positively reciting a rinsing step or not. The examiner requests applicant to change "to perform" to "and performing" if such a step is intended to be claimed.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by, or alternatively under 35 U.S.C. 103, as being obvious to Mann et al USPN 5,545,191.

Mann et al. teach a first portion 12 that is implantable within a patient a pad with Velcro 24 thereon which is attached to the skin by an adhesive that is applied to the pad (column 4, lines 21-24), a having a first alignment means (i.e. a circular Velcro stip that has a female portion on one side and a male portion on a second portion 32 as seen in figure 3. Other aligning and

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connecting member configurations are shown in other figures. Since the function performed by applicant's means as depicted in figure 1a is also performed by the Mann et al device, the examiner considers them to equivalent structure under 112 6th paragraph, or an obvious substitution since snap connectors and Velcro connectors are considered old and well known in the art.

4. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Arnold USPN 4,995,857. Arnold discloses an impeller pump that is capable of being implanted in the body. The embodiment of figure 6 would be capable of connecting the heart to a femoral artery with the pump in an implanted state. The examiner also considers the various loops in other embodiments to be long enough to connect the patient left atrium to the axillary vein. Therefore applicant's statements of intended use do not define structurally over that which is shown by Arnold.

5. Claims 12, 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Bolling USPN 6,299,575. Bolling teaches an implantable pump. With regard to figure 6, the examiner considers branch portions 252A and 250A to form first and second conduits and branch portions 252B and 250B to form third and fourth conduits. The lengths of each of the conduits as illustrated in relation to the body would be fully capable of meeting applicant's "configured" language. Branch conduit 4 would direct fluid that is expelled from the pump ultimately back into

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another part of the system (conduits 252 A and B) and back to the internal portion of the pump via the patients body. (Claims 15-18).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-4 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold USPN 4,995,857 in view of Bolling USPN 6,299,575. Arnold teaches the connection of a suction tube 78 to the atrium and a delivery tube 80 to the femoral artery but teaches such a system is used with an external pump 82. However those of ordinary skill in the art would recognize that long term treatment would entail the implantation of a pump. As evidence in support of examiner's position, Bolling teaches a similar pump system for pumping blood from the heart via the axillary artery to the femoral arteries in figures 4 and 5 and show both internal and external pumping systems may be employed. Bolling provides discussion at column 9 lines 40-53. To have merely implanted the pump member of Arnold into the patient would have been well within the level of skill in the art. The blood expelled from the Arnold pump returns to

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another portion of the system, namely the conduit 78. Applicant's recitation of "for rinsing" in the claim is not seen as a step but rather an intention, which is given little to no patentable weight.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claims 1 and 3 above, and further in view of Goldowsky USPN 5,924,975.

To have used an implantable transcutaneous power supply to recharge the pump system of Arnold as modified by Bolling column 8 lines 35-44 using a first implanted portion and a second implanted portion as per figure 1 (element 20) of Goldowsky) would have been a conventional.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolling USPN 6,299,575 in view of Mann et al. USPN 5,545,191. Goldowsky teaches the invention of claim 12 as noted above but does not teach the details of the transcutaneous device of claim 13, which is identical to that claimed by applicant in claim 19 to which Mann et al teaches as discussed above. To have provided the Mann et al power transmitter to have recharged the Bolling battery would have been an obvious selection of components known to the art for performing their desired function.

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Allowable Subject Matter

10. Claims 2, 5-9 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Bockelman whose telephone number is (703) 308-2112. The examiner can normally be reached on Monday through Friday from 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3591.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

MWB

March 17, 2002


MARK BOCKELMAN
PRIMARY EXAMINER

Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.